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IN THE SUPERIOR COURT OF GUAM
HAGÁTÑA, GUAM

LEEVIN TAITANO CAMACHO,)
Attorney General of Guam,)
)
 Plaintiff,)

vs.)

DAFNE M. SHIMIZU, Director, Guam)
Department of Revenue and Taxation;)
LOURDES A. LEON GUERRERO,)
Governor of Guam; ATLAS)
AMUSEMENT ENTERPRISES, INC.;)
DARRYL R. STYLES d/b/a D&D GAMES;)
GUAM MUSIC, INC.; and DOES 1-10,)
 Defendants.)

CIVIL CASE NO. CV0780-13

ATTORNEY GENERAL'S OPPOSITION
TO DEFENDANT GUAM MUSIC INC.'S
MOTION FOR STAY OF EXECUTION
OF JUDGMENT PENDING APPEAL

FILED
SUPERIOR COURT
OF GUAM

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By: 

judgment on March 16, 2020. The judgment was entered on the docket on June 3, 2020. On June 8, 2020, defendant GMI filed a notice of appeal. Defendant Atlas filed a notice of appeal on June 12, 2020.

On June 8, 2020, GMI filed a motion to stay the execution of judgment pending appeal. Atlas joined the motion on June 12, 2020.

III. ARGUMENT

A. Legal standards governing stay of judgment pending appeal.

Rule 12 of the Guam Rules of Appellate Procedure provides that “[a] party must ordinarily move first in the Superior Court for . . . a stay of the judgment or order of a Superior Court pending appeal”. Guam R. App. P. 12(a)(1)(A). A court’s power to enter a stay is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North Am. Water Works & Elec. Co.*, 299 U.S. 248, 254 (1936). A “[c]ourt has broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997). “A stay is not a matter of right It is instead an exercise of judicial discretion . . . [that] is dependent upon the circumstances of the particular case.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (citations and internal quotation marks omitted).

A court considers four factors in deciding whether to grant a stay pending appeal:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

Id. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); accord *Humane Soc’y of the United States v. Gutierrez*, 523 F.3d 990, 991 (9th Cir. 2008). The burden of showing the

four-factor test is met falls on the party requesting the stay. *Nken*, 556 U.S. at 433.

The Ninth Circuit Court of Appeals weighs or balances the four factors along a “‘continuum,’ [which is] essentially the same as the ‘sliding scale’ approach . . . whereby the elements . . . are balanced, so that a stronger showing of one element may offset a weaker showing of another.” *Leiva-Perez v. Holder*, 640 F.3d 962, 964-66 (9th Cir. 2011). However, the first and second factors—likelihood of success and irreparable injury—“are the most critical.” *Nken*, 556 U.S. at 434. When using the sliding scale approach to determining whether to impose a stay, the moving party “need not demonstrate that it is more likely than not that they will win on the merits,” so long as that party demonstrates irreparable injury. *Leiva-Perez*, 640 F.3d at 966; see *Sananap v. Cyfred*, 2009 Guam 13 ¶ 42 (noting that the movant may focus its discussion on either one of two factors, likelihood of success or irreparable injury).

B. The defendants are not entitled to an automatic stay.

GMI contends that it is entitled to a stay as a matter of right. Mot. ¶ 3. This is incorrect as a matter of law.

Under GRCP 62(d), “an appellant may obtain a stay as a matter of right by posting a supersedeas bond acceptable to the Court.” *Paeste v. Gov’t of Guam*, 2016 WL 9450614, *1 (D. Guam, Apr. 8, 2016). GRCP 62(d) applies only to a stay of money judgment. *Arban v. West Pub. Corp.*, 345 F.3d 390, 409 (6th Cir. 2003) (“Rule 62(d) entitles a party who files a satisfactory supersedeas bond to a stay of money judgment as a matter of right.”). In the case of a non-monetary judgment, on the other hand, “[a] stay of execution is an equitable remedy that is not available as a matter of right.” *Wood v. Collier*, 836 F.3d 534, 538 (5th Cir. 2016) (citing *Hill v. McDonough*, 547 U.S. 573, 584 (2006)).

GMI argues that, since there is no money judgment, there is no need for a supersedeas bond. In that event, GMI must concede that GRCP 62(d) does not apply and GMI is not entitled

to an automatic stay. Instead, the court must use the four-factor test to determine whether to grant GMI a stay.

C. The court should deny the stay based on the defendants' inability to meet the four-factor test for granting a stay.

1. The defendants are unlikely to prevail on appeal.

To satisfy the need for a stay, a movant must show a likelihood of success on the merits. The Ninth Circuit refers to this as the “minimum quantum of likely success necessary to justify a stay.” *Leiva-Perez*, 640 F.3d at 967. This minimum quantum is described as “a reasonable probability or fair prospect, . . . a substantial case on the merits, . . . or . . . that serious legal questions are raised.” *Id.* at 968 (citations and internal quotation marks omitted). “These formulations are essentially interchangeable, and . . . none of them demand a showing that success is more likely than not.” *Id.*

GMI has not shown that there are significant legal questions to be resolved on appeal or that it is likely to prevail on those questions. GMI argues that it has “a good chance of success on appeal.” Mot. ¶ 14. The standard requires a strong showing of likely success on the merits. “A good chance” does not equal a strong showing.

In its motion, GMI states only that its argument concerning 1 GCA § 1610 gives it a good chance of success on appeal. GMI does not elaborate on this conclusory statement. A review of its opposition filed on January 24, 2017, to the Attorney General’s motion for summary judgment shows that GMI intends to argue that section 1610 codified and published all regulations received by the Compiler of Laws prior to the 27th Guam Legislature, including the gaming regulations at issue here.

This argument will fail on appeal because, as this court’s decision and order on the Attorney General’s motion for summary judgment recognized, the regulations here were void *ab*

initio due to DRT's failure to comply with the Administrative Adjudication Law. In addition, the regulations exceeded DRT's statutory authority. Section 1610 cannot cure an unconstitutional delegation of legislative authority.

2. The defendants will not suffer irreparable injury.

GMI raises the possibility that financial harm will befall it if the court does not stay execution of the judgment in this case. "The second factor requires more than some possibility of irreparable injury. The applicant must show that there is a probability of irreparable injury if the stay is not granted." *In re Blixseth*, 509 B.R. 701, 706 (D. Mont. 2014) (citing *Lair v. Bullock*, 697 F.3d 1200, 1214 (9th Cir. 2012); *Leiva-Perez*, 640 F.3d at 966). GMI has failed to make a showing under the second factor of the test.

GMI represents that it has taken advantage of federal Covid-19 programs. GMI alleges that it will not receive loan forgiveness if the judgment is not stayed. GMI, however, does not elaborate on the consequences. It is also unclear from the pleadings whether GMI applied for Covid-19 programs after this court issued its decision. If it did, GMI knew that this court had declared the gaming rules and regulations invalid and knew about the risk it was facing in applying for the programs. Following the terms of the program that GMI agreed to is not an irreparable injury. Atlas states that the harm will come when Covid restrictions are relaxed. But the relaxation of restrictions is not timed for a definite date, which further contributes to the speculative nature of the defendants' assertions.

GMI states that it has agreements with other businesses. GMI does not, however, state what will happen to the agreements or the consequences if the judgment is executed.

GMI alleges that there are nine locations where its machines are located and that GMI does not know whether these locations can remain open without the machines. That fact that GMI does not know means that GMI's allegation is purely speculative.

GMI argues that its 300 employees who operate the machines will lose their jobs and, further, that GMI will not hire an “expected” additional 100 employees as cleaners. Similar to the other statements of harm, these statements are speculative.

Finally, GMI offers not even a scintilla of proof in support of its allegations. Thus, GMI has not shown that it will suffer irreparable harm. This factor militates against granting a stay pending appeal.

3. Issuing a stay will substantially injure the plaintiff and the public interest favors immediate execution of judgment.

Gambling does not serve the public interest. Any tax revenue and economic activity engendered by gambling can be better engendered through other economic activities. In hard times, such as those upon us now, people have less discretionary income for activities such as gambling. Money spent on gambling will not be available for spending on life’s necessities by those least able to forgo them.

Moreover, the people of Guam disfavor gambling machines and in a 2008 referendum voted against them. GMI has subverted the law and the will of the people by continuing to operate its machines, despite the invalidation of regulations that never permitted their operation in the first place. Through this litigation, the Attorney General has been trying to represent the will of the people for at least the past seven years. The court has the power to stop GMI from undermining the Attorney General’s efforts on behalf of the people and the court’s own decision.

GMI has failed to meet all parts of the four-factor test and has therefore failed to establish that a stay of judgment pending appeal is warranted.

IV. CONCLUSION

GMI is asking this court to stay the judgment to allow GMI and the other defendants, without justification and against the public interest, to restart illegal gambling activities that

relied on invalid regulations as the basis for their existence. That basis vanished with the court's ruling that the regulations are invalid. The court should adhere to its own ruling and deny the defendants' motion to stay the execution of judgment pending appeal.

Dated this 6th day of July, 2020.

OFFICE OF THE ATTORNEY GENERAL
Leevin Taitano Camacho, Attorney General



By:

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